

From: Tanner, Barbara [Tanner.Barbara@epa.gov]
Sent: 10/30/2018 4:25:12 PM
To: Faeth, Lisa [Faeth.Lisa@epa.gov]; Anderson, Steve [Anderson.Steve@epa.gov]; Askinazi, Valerie [Askinazi.Valerie@epa.gov]; Baptist, Erik [Baptist.Erik@epa.gov]; Barkas, Jessica [barkas.jessica@epa.gov]; Beck, Nancy [Beck.Nancy@epa.gov]; Blair, Susanna [Blair.Susanna@epa.gov]; Blunck, Christopher [Blunck.Chris@epa.gov]; Buster, Pamela [Buster.Pamela@epa.gov]; Canavan, Sheila [Canavan.Sheila@epa.gov]; Caraballo, Mario [Caraballo.Mario@epa.gov]; Carroll, Megan [Carroll.Megan@epa.gov]; Cherepy, Andrea [Cherepy.Andrea@epa.gov]; Christian, Myrta [Christian.Myrta@epa.gov]; Corado, Ana [Corado.Ana@epa.gov]; Davies, Clive [Davies.Clive@epa.gov]; Dekleva, Lynn [dekleva.lynn@epa.gov]; Devito, Steve [Devito.Steve@epa.gov]; Doa, Maria [Doa.Maria@epa.gov]; Drewes, Scott [Drewes.Scott@epa.gov]; Dunton, Cheryl [Dunton.Cheryl@epa.gov]; Edelstein, Rebecca [Edelstein.Rebecca@epa.gov]; Edmonds, Marc [Edmonds.Marc@epa.gov]; Elwood, Holly [Elwood.Holly@epa.gov]; Farquharson, Chenise [Farquharson.Chenise@epa.gov]; Fehrenbacher, Cathy [Fehrenbacher.Cathy@epa.gov]; Feustel, Ingrid [feustel.ingrid@epa.gov]; Frank, Donald [Frank.Donald@epa.gov]; Gibson, Hugh [Gibson.Hugh@epa.gov]; Gimlin, Peter [Gimlin.Peter@epa.gov]; Gorder, Chris [Gorder.Chris@epa.gov]; Gordon, Brittney [Gordon.Brittney@epa.gov]; Grant, Brian [Grant.Brian@epa.gov]; Gray, Shawna [Gray.Shawna@epa.gov]; Groeneveld, Thomas [Groeneveld.Thomas@epa.gov]; Guthrie, Christina [Guthrie.Christina@epa.gov]; Helfgott, Daniel [Helfgott.Daniel@epa.gov]; Henry, Tala [Henry.Tala@epa.gov]; Kapust, Edna [Kapust.Edna@epa.gov]; Kemme, Sara [kemme.sara@epa.gov]; Koch, Erin [Koch.Erin@epa.gov]; Krasnic, Toni [krasnic.toni@epa.gov]; Lavoie, Emma [Lavoie.Emma@epa.gov]; Lee, Mari [Lee.Mari@epa.gov]; Lee, Virginia [Lee.Virginia@epa.gov]; Leopard, Matthew (OEI) [Leopard.Matthew@epa.gov]; Liva, Aakruti [Liva.Aakruti@epa.gov]; Lobar, Bryan [Lobar.Bryan@epa.gov]; Mclean, Kevin [Mclean.Kevin@epa.gov]; Menasche, Claudia [Menasche.Claudia@epa.gov]; Morris, Jeff [Morris.Jeff@epa.gov]; Moss, Kenneth [Moss.Kenneth@epa.gov]; Mottley, Tanya [Mottley.Tanya@epa.gov]; Moyer, Adam [moyer.adam@epa.gov]; Myers, Irina [Myers.Irina@epa.gov]; Myrick, Pamela [Myrick.Pamela@epa.gov]; Nazef, Laura [Nazef.Laura@epa.gov]; Ortiz, Julia [Ortiz.Julia@epa.gov]; Owen, Elise [Owen.Elise@epa.gov]; Parsons, Doug [Parsons.Douglas@epa.gov]; Passe, Loraine [Passe.Loraine@epa.gov]; Pierce, Alison [Pierce.Alison@epa.gov]; Pratt, Johnk [Pratt.Johnk@epa.gov]; Price, Michelle [Price.Michelle@epa.gov]; Reese, Recie [Reese.Recie@epa.gov]; Reisman, Larry [Reisman.Larry@epa.gov]; Rice, Cody [Rice.Cody@epa.gov]; Richardson, Vickie [Richardson.Vickie@epa.gov]; Ross, Philip [Ross.Philip@epa.gov]; Sadowsky, Don [Sadowsky.Don@epa.gov]; Santacroce, Jeffrey [Santacroce.Jeffrey@epa.gov]; Saxton, Dion [Saxton.Dion@epa.gov]; Scarano, Louis [Scarano.Louis@epa.gov]; Scheifele, Hans [Scheifele.Hans@epa.gov]; Schmit, Ryan [schmit.ryan@epa.gov]; Schweer, Greg [Schweer.Greg@epa.gov]; Selby-Mohamadu, Yvette [Selby-Mohamadu.Yvette@epa.gov]; Seltzer, Mark [Seltzer.Mark@epa.gov]; Sheehan, Eileen [Sheehan.Eileen@epa.gov]; Sherlock, Scott [Sherlock.Scott@epa.gov]; Simons, Andrew [Simons.Andrew@epa.gov]; Sirmons, Chandler [Sirmons.Chandler@epa.gov]; Slotnick, Sue [Slotnick.Sue@epa.gov]; Smith, David G. [Smith.DavidG@epa.gov]; Smith-Seam, Rhoda [smith-seam.rhoda@epa.gov]; Stedeford, Todd [Stedeford.Todd@epa.gov]; Strauss, Linda [Strauss.Linda@epa.gov]; Symmes, Brian [Symmes.Brian@epa.gov]; Tanner, Barbara [Tanner.Barbara@epa.gov]; Thompson, Tony [Thompson.Tony@epa.gov]; Tierney, Meghan [Tierney.Meghan@epa.gov]; Tillman, Thomas [Tillman.Thomas@epa.gov]; Tomassoni, Guy [Tomassoni.Guy@epa.gov]; Tran, Chi [Tran.Chi@epa.gov]; Turk, David [Turk.David@epa.gov]; Vendinello, Lynn [Vendinello.Lynn@epa.gov]; Wallace, Ryan [Wallace.Ryan@epa.gov]; Wheeler, Cindy [Wheeler.Cindy@epa.gov]; Widawsky, David [Widawsky.David@epa.gov]; Williams, Aresia [Williams.Aresia@epa.gov]; Williams, Bridget [Williams.Bridget@epa.gov]; Williamson, Tracy [Williamson.Tracy@epa.gov]; Wills, Jennifer [Wills.Jennifer@epa.gov]; Wise, Louise [Wise.Louise@epa.gov]; Wolf, Joel [Wolf.Joel@epa.gov]; Wright, Tracy [Wright.Tracy@epa.gov]; Yowell, John [yowell.john@epa.gov]
Subject: News Articles (For EPA Distribution Only)

BNA DAILY ENVIRONMENT REPORT ARTICLES



Customer Gary Harms shops for Roundup products at a store in San Rafael, Calif., on July, 9, 2018.

Photographer: Josh Edelson/AFP/Getty Images

News

Quaker Oats Hit With New Suit Over Weedkiller Residue

Posted Oct. 29, 2018, 12:52 PM

- Suit follows report about glyphosate in cereal
- Maker had duty to disclose, suit says

PepsiCo, Inc. and its Quaker Oats Co. unit deceived consumers by failing to disclose that more than a dozen cereals and bars touted as healthful contain traces of the weedkiller glyphosate, a new proposed class suit alleges.

Glyphosate is used as a drying agent for oats and other grains. It is also the active ingredient in Roundup, exposure to which caused a groundskeeper's non-Hodgkins lymphoma, a blood cancer, a jury recently determined.

The suit in the U.S. District Court for the Central District of California notes a report and update from the Environmental Working Group that found glyphosate residue in breakfast cereals.

The cereal maker denied the suit's claims.

"This lawsuit has no merit," Quaker said in a statement to Bloomberg Law Oct. 29. "We proudly stand by the safety and quality of Quaker products," the company said.

Other Roundup Residue Suits

The new suit joins other glyphosate litigation, including suits against Pret a Manger and Citrus World Inc., alleging their products contain traces of the weedkiller.

Here, Quaker says Quaker Old Fashioned Oats and other products are "whole grain," "may reduce the risk of heart disease," and have other benefits, Morgan Steckler alleges.

These health representations make consumers think the products won't pose a safety risk, Steckler's suit says.

In 2015, the International Agency for Research on Cancer—an arm of the World Health Organization—labeled glyphosate a probable carcinogen.

Regulators, including the Environmental Protection Agency, say the glyphosate found in food isn't a problem because it's at low levels. But some scientists contend not enough is known about the effects of eating small amounts of it, especially over long periods of time.

Because it is a probable carcinogen with no nutritional value, any amount of glyphosate, even below regulatory limits, would keep consumers from buying the Quaker products, the suit says.

The defendants had a duty to disclose the presence of glyphosate or, at a minimum, that they couldn't guarantee the products were glyphosate-free, the suit alleges.

Steckler seeks money damages and marketing changes on behalf of California and multistate classes.

<https://news.bloombergenvironment.com/environment-and-energy/quaker-oats-hit-with-new-suit-over-weedkiller-residue>

EPA Courtroom Error Spurs Back-and-Forth on Secret Chemicals, Safety

Posted Oct. 26, 2018, 4:39 PM

- Confidential chemicals' link to public data must be clearer, group tells court
- List of chemicals with numbers to shield identity coming in November

All data regarding the health effects and safety of a chemical must be clearly linked to that substance even if the identity of the compound is shielded, an environmental group reiterated to a federal court.

The Environmental Defense Fund Oct. 25 recapped arguments it made in a lawsuit challenging an Environmental Protection Agency rule (RIN 2070 AK24) implementing some confidential business information provisions of the 2016 Toxic Substances Control Act amendments.

The group's letter followed a notice Phillip Dupre, a Department of Justice attorney representing the agency, sent the U.S. Court of Appeals for the District of Columbia Circuit Oct. 17 about a mistake he made during recent oral arguments.

Dupre told Chief Judge Merrick B. Garland and Judges Patricia A. Millett and Harry T. Edwards that during the Oct. 12 arguments, he inadvertently described the agency's plans for a special code required by TSCA as a proposed rule.

The EPA's plans actually are explained in a notice it published June 27, Dupre said. The distinction matters because EPA notices, as opposed to rules, are not binding commitments. That means the EPA intends to follow the plans it described in that notice, but it is not obliged to.

Link to Health, Safety Data

Dupre's notice summarizes the EPA's system for a special code, called a "unique identifier," under the amended TSCA, that can be used to shield the identity of a chemical the agency allows to remain undisclosed.

A chemical's identity refers to details such as the materials from which the molecule is made, how it is manufactured, and how its atoms are arranged.

These chemical identities are used by the agency to protect manufacturers' confidential business information. The EPA is supposed to place the special code on health and safety data it receives about a chemical without disclosing the chemical's specific identity.

According to the original and amended TSCA, sound business justifications may exist to keep chemical identities secret, but information about the ways the chemical may injure people or the environment must be public.

TSCA Inventory Update

Chemical manufacturers have reasserted their need to keep previously confidential chemical identities secret as they worked with the EPA to update the TSCA inventory, the agency's list of chemicals that are or have been made and sold in the U.S.

The EDF's lawsuit focuses on the confidential business information substantiations the EPA rule required during that inventory update.

Primarily, the environmental group says the 2017 agency rule that laid out the inventory update and substantiation process failed to provide the public access to chemical information as the law requires.

The unique identifier issues arises as part of the challenge, however, because public access to health and safety data is enabled by including the unique identifiers on the TSCA inventory, Robert P. Stockman, the EDF attorney, wrote in the group's response to Dupre's letter.

The inventory should provide the identifier and related information that would enable the public to piece together all publicly available information about the same compound, EDF said.

In an earlier brief filed in the case, the EPA said it will more fully address the unique identifier requirements of TSCA in a future rulemaking.

Meanwhile, the EPA expects to publish its first list of chemicals that use unique identifiers to protect their confidential identities by the end of November, Dupre's letter said.

The case is Environmental Defense Fund v. EPA, D.C. Cir., No. 17-1201, 10/25/18.

<https://news.bloombergenvironment.com/environment-and-energy/epa-courtroom-error-spurs-back-and-forth-on-secret-chemicals-safety>

INSIDEEPA.COM ARTICLES

Concern On North Carolina's GenX Level Previews Response To EPA Study

Public concerns from both industry and environmentalists on North Carolina's estimated risk standard for the per- and polyfluoroalkyl substance (PFAS) chemical GenX are a likely preview to reaction EPA will receive after it releases its own draft risk analysis and estimate for the same chemical, slated for release in the coming weeks.

GREENWIRE ARTICLES

Trump interviews regs chief for D.C. Circuit — report

Ellen M. Gilmer, E&E News reporter



White House Office of Information and Regulatory Affairs chief Neomi Rao has reportedly been interviewed for the U.S. Court of Appeals for the District of Columbia Circuit. Senate Homeland Security and Governmental Affairs Committee
Published: Monday, October 29, 2018

President Trump interviewed his White House regulations chief for a lifetime appointment on a federal appeals court, the news outlet *Axios* reported.

Neomi Rao, administrator of the Office of Information and Regulatory Affairs, is considered a short-lister for Supreme Court Justice Brett Kavanaugh's former seat on the U.S. Court of Appeals for the District of Columbia Circuit. *Axios* reported yesterday that Trump interviewed the OIRA chief for the job.

The White House did not respond to questions from E&E News about the reported interview or about its target timeline for filling the vacant seat.

As OIRA chief, Rao is responsible for implementing the president's regulatory reform efforts. That mandate has won her praise from proponents of deregulation and criticism from environmentalists and others who say the Trump administration is trying to dismantle important safeguards.

Rao previously served as a law professor at George Mason University and is an expert in administrative law.

"What she does offer that's, I think, valuable, and presidents tend to overlook, is she really is steeped in administrative law, regulatory action, all of that, which presidents have neglected," said University of Richmond law professor Carl Tobias, an expert on judicial nominations. "And that's really half the caseload, and it is valuable to have that expertise."

Other prominent lawyers considered potential contenders for the D.C. Circuit opening: Kate Todd, a former senior vice president and chief counsel for the litigation arm of the U.S. Chamber of Commerce; Kannon Shanmugam, a partner at Williams & Connolly LLP; Kristin Hickman, a law professor at the University of Minnesota; and several others (*Greenwire*, Oct. 10).

Several judicial nominees are already pending before the Senate Judiciary Committee. Unless Chairman Chuck Grassley (R-Iowa) agrees to leapfrog the D.C. Circuit pick ahead of other nominees, it could be spring before Kavanaugh's seat is filled, Tobias said.

Lehnertz could not be reached for comment. Her NPS email account sent back an automatic reply that said she was "away from the office" and would not be checking email or voicemail messages.

<https://www.eenews.net/greenwire/2018/10/29/stories/1060104609>

Agency workers say building conditions risk their health

Published: Monday, October 29, 2018

Maryland health department workers say they're facing sickening conditions in their state office building and want things fixed.

Some employees at the West Preston Street building in Baltimore say that they've seen rodents and other pests and that the air is hard to breathe. They offered photos of debris falling through ceilings, rusted-out water fountains and a black snake caught in a mousetrap.

WBAL-TV reports workers expressed frustrations this past week with a union local's help and want politicians to step up. Health employee Ben Wolff said he's seen co-workers "face physical working conditions that pose real risks to their health."

The state Department of General Services told the station that it fixes problems when they surface and that a professional contractor performing tests recently found normal air quality readings and no mold. — *Associated Press*

<https://www.eenews.net/greenwire/2018/10/29/stories/1060104593>

CHEMICAL WATCH ARTICLES

EPA withdraws rulemaking for 29 Snurs

30 October 2018 / Substance notification & inventories, TSCA, United States

The US EPA has withdrawn 29 TSCA significant new use rules (Snurs) issued under direct final rulemakings in response to adverse comments.

The EPA initially issued the rules in two batches – one on 19 Snurs, and a second covering ten others – on 27 August.

The Snurs cover a variety of new substances approved for commerce with certain restrictions. They are intended to extend the requirements imposed by each substance's consent order to others who intend to use the chemical in the future. Without a Snur, the consent orders are only binding on the original pre-manufacture notice submitter (PMN).

Four comments were received for the batch of ten, and eight were received for the batch of 19 before the 26 September comment deadline.

The Environmental Defense Fund (EDF) raised concerns over both batches, which were largely procedural and semantic in nature. The Physicians Committee for Responsible Medicine (PCRM), meanwhile, took issue with the testing on vertebrate animals requirements set by certain rules in both.

The American Chemistry Council (ACC) submitted comments on the batch of 19 Snurs, which covered several isocyanate-based substances. The trade group primarily sought clarity on the regulations' scope, although they also argued that the EPA should defer worker protections contained within the Snurs to the Occupational Safety and Health Administration (Osha) and eliminate a record-keeping provision.

Rulemaking process

Direct final rules can be used to move forward non-controversial regulations on an expedited timeline. But if and when they are met with significant adverse comment, the EPA must withdraw them and start the proposed rulemaking process.

However, in this case, the EPA issued both the direct rule and the proposal simultaneously. This somewhat novel practice has raised questions about whether or not the agency will reopen the comment period for the original proposal.

As of publication, the EPA has not done so for the two proposed rules. In the case of the batch of 145 Snurs issued in August and withdrawn in September, however, the comment period was reopened within a few weeks.

Related Articles

- [EPA issues 29 TSCA significant new use rules](#)
- [EPA issues 145 TSCA significant new use rules](#)
- [EPA withdraws rulemaking for 145 Snurs](#)
- [US EPA reopens comment periods for 172 Snurs](#)

Further Information:

- [Federal Register: batch of 10](#)
- [Federal Register: batch of 19](#)
- [Docket: batch of 10](#)
- [Docket: batch of 19](#)

Senator criticises TSCA implementation as a 'remarkable disaster'

Forum focuses on 'conflict' between science and policy at EPA

29 October 2018 / TSCA, United States



The implementation of the amended TSCA under the Trump administration has been a "remarkable disaster" according to one of the architects of the 2016 legislation that updated the law.

Speaking at a 19 October forum hosted by Harvard's public health school, Senator Tom Udall (D–Arizona) said passage of the Frank R Lautenberg Chemical Safety for the 21st Century Act put in place a law that began the process of fixing "a chemical safety law that was broken".

But despite the new law being strong, the Trump administration had been trying to "roll back what TSCA is trying to do". This, Mr Udall said, undermined its very purpose: to implement a system to protect science and public health.

What is important, he said, "isn't just the law, it's the implementation of the law, and it's the regulations that specifically focus in on the science and the public health – making sure we get all of it right."

And he added his constituents perceive that "the agency has been captured by the industry" and lobbyists.

The senator's comments came during a discussion on conflicts between science and policy at the EPA, with former agency administrators Gina McCarthy and William Ruckelshaus and Harvard environmental law professor, Wendy Jacobs.

The hour-long event also saw concerns raised over the administration's attitude to science and its recent controversial science 'transparency' proposal.

Mr Udall said that the subcommittee on which he sits – Commerce, Science and Transportation – is particularly focused on how the agency is "disregarding science in terms of coming up with regulations and protecting public health".

Commenting on the science 'transparency' proposal, Ms McCarthy said "changing the rules of the road" will impact the EPA's ability to make well-informed decisions.

"The courts give such deference to the EPA on their science and analytics, so it's extremely disconcerting to have [the transparency proposal] in the mix," she said.

But, she added, she has "a hard time believing that some of the fundamental changes on transparency are going to be successful".



Lisa Martine Jenkins
Americas reporter

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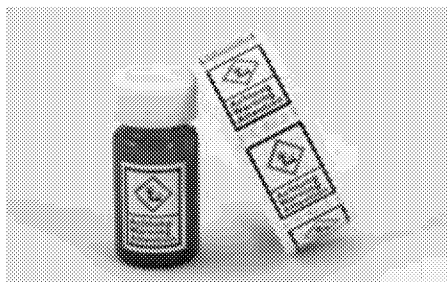
- [US EPA's science 'transparency' proposal likely delayed until 2020](#)

Further Information:

- [Forum video](#)

Chile moves closer to finalising GHS regulation

29 October 2018 / Chile, GHS



Chile's environment and health ministries have approved a proposed draft regulation for the classification, labelling, and notification of chemical substances and mixtures.

If passed, the regulation would implement the UN Globally Harmonized System (GHS) of classifying and labelling chemicals and would include a transition period for the adjustment of labelling and safety data sheets.

The 26 October announcement said the proposed draft would also provide for the notification and evaluation of chemicals in a similar fashion to that under the EU's classification, labelling and packaging (CLP) Regulation. Manufacturers of hazardous industrial chemicals will have to notify the environmental authorities with information on the identification, uses and amounts of the chemicals in question.

For the evaluation of chemicals, the proposed regulation says the environmental and health authorities will issue the proper legal instrument establishing the criteria for selecting the substances that will be subject to evaluation, and the methodology that will be used to assess the risk.

The proposed regulation is awaiting finalisation and publication in the country's *Official Gazette*. There have been a number of developments on GHS in Latin America recently. On 9 October [Mexico](#) implemented legislation. [Colombia](#) implemented GHS in August. In July the [OECD](#) made it mandatory for member countries, and those in the process of becoming so, to implement GHS.



Cristina Caro Tovar

Regulatory attorney

Related Articles

- [Mexico's mandatory GHS standard comes into force](#)
- [Colombia revises chemical laws as it joins OECD](#)
- [OECD makes GHS mandatory for member states](#)

Further Information:

- [Environment ministry statement](#)

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